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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES

6 AND

7 SANTA CLARA VALLEY WATER DISTRICT

8 PROVIDING FOR PROJECT WATER SERVICE AND REPAYMENT

9 FROM THE DELTA DIVISION AND SAN FELIPE DIVISION

10
11 THIS CONTRACT, made this _____ day of _____, 200_ in pursuance
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory and supplementary thereto,
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
15 483), June 21, 1963 (77 Stat. 68), August 27, 1967 (81 Stat. 173), October 12, 1982 (96 Stat. 1263),
16 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
17 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE
18 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and SANTA CLARA
19 VALLEY WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State
20 of California, duly organized, existing, and acting pursuant to the laws thereof;

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21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
24 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood
25 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
26 restoration, generation and distribution of electric energy, salinity control, navigation and other
27 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the
28 San Joaquin River and their tributaries; and

29 [2nd] WHEREAS, the United States constructed the Delta Division Facilities, the San Felipe
30 Division Facilities and related facilities, which will be used in part for the furnishing of water to the
31 Contractor pursuant to the terms of this Contract; and

32 [2.1] WHEREAS, the Contractor is dependent upon San Luis Reservoir for the conveyance
33 of Project Water from the Delta Division to the San Felipe Division Facilities; and

34 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
35 to California law for operation of the Project; and

36 [3.1] WHEREAS, the Contractor's groundwater basins have previously been overdrawn in
37 the absence of a supply from the Project and the lands of the Contractor and its inhabitants are in

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38 need of continued Project Water for beneficial uses and purposes; and

39 [4th] WHEREAS, the Contractor and the United States entered into Contract No. 7-07-20-
40 W0023, **dated June 7, 1977**, which established terms for the delivery to the Contractor of Project
41 Water from the Delta Division Facilities and San Felipe Division Facilities from **January 1, 1988**
42 through **December 31, 2027** (hereinafter referred to as “Existing Contract”); and

43 [5th] WHEREAS, the United States and the Contractor have, pursuant to Subsection 3404
44 (c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a binding
45 agreement, identified as Binding Agreement No. 7-07-20-W0023-BA which sets out the terms
46 pursuant to which the Contractor agreed to renew the Existing Contract before its expiration date
47 after completion of a programmatic environmental impact statement (PEIS) and other appropriate
48 environmental documentation and negotiation of a renewal contract, and which also sets out the
49 consequences of a subsequent decision not to renew; and

50 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
51 Existing Contract following completion of appropriate environmental documentation, including a
52 PEIS pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect
53 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts
54 for Project Water; and

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55 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
56 environmental review necessary to provide for long-term renewal of the Existing Contract; and

57 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
58 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
59 State of California, for water service from the Project, and has further requested that the renewed
60 contract be both a repayment contract with respect to the San Felipe Division Facilities (historically
61 referred to as the “out-of-basin” facilities); and Water Service Contract with respect to the Project
62 Facilities exclusive of the San Felipe Division Facilities (historically referred to as the “in-basin”
63 facilities), and Reclamation is agreeable to such conversion; and

64 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
65 its obligations under the Existing Contract; and

66 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
67 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
68 beneficial use and/or has demonstrated projected future demand for water use such that the
69 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the quantity
70 of Project Water to be made available to it pursuant to this Contract; and

71 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and

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agricultural areas within California for more than 50 years, and is considered by the Contractor as an essential portion of its water supply; and

[12th] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

[13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to pursue measures to improve water **supplies**, water quality, and reliability of the Project for all Project purposes; and

[14th] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a reasonable balance among competing demands for use of Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Project; and

[15th] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments, rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the

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89 impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

90 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
91 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
92 immediately above; and

93 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
94 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

95 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
96 contained, it is hereby mutually agreed by the parties hereto as follows:

97 DEFINITIONS

98 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
99 with the intent of the parties as expressed in this Contract, the term:

100 (a) “Calendar Year” or “Year” shall mean the period January 1 through
101 December 31, both dates inclusive;

102 (b) “Charges” shall mean the payments required by Federal Reclamation law in
103 addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually
104 by the Contracting Officer pursuant to this Contract;

105 (c) “Condition of Shortage” shall mean a condition respecting the Project during

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106 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract

107 Total;

108 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly

109 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or

110 regulation;

111 (e) “Contract Total” shall mean the maximum amount of water to which the

112 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

113 (f) “Contractor's Service Area” shall mean the area within the Contractor’s

114 jurisdiction to which the Contractor is permitted to provide Project Water under this Contract, as set

115 forth ~~described~~ in Exhibit “A” attached hereto, which may be modified from time to time in

116 accordance with Article 35 of this Contract without amendment of this Contract;

117 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title

118 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

119 (g.1) “Delta Division Facilities” shall mean those existing and future Project

120 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the

121 Tracy Pumping Plant, the O’Neill Forebay, the O’Neill Pumping/Generating Plant, and the San Luis

122 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive

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123 water conveyed through the Delta-Mendota Canal.

124 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be
125 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
126 Stat. 1263), as amended, hereinafter referred to as RRA;

127 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in
128 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
129 Reclamation law;

130 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting
131 Officer that shall amortize the expenditures for construction properly allocable to the Project
132 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
133 less payments, over such periods as may be required under Federal Reclamation law, or applicable
134 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
135 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
136 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
137 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
138 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
139 the RRA;

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140 (k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be
141 delivered in accordance with Section 204 of the RRA;

142 (l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to
143 the delivery of Irrigation Water;

144 (m) “Irrigation Water” shall mean water made available from the Project that is
145 used primarily in the production of agricultural crops or livestock, including domestic use incidental
146 thereto, and watering of livestock;

147 (m.1) **“Joint Service Area” shall mean the combination of the Contractor’s**
148 **Service Area and service areas of the other San Felipe Division contractors as shown on Exhibit**
149 **“A” attached hereto, which may be modified by mutual agreement of the parties to this**
150 **Contract without amendment of this Contract.**

151 (n) “Landholder” shall mean a party that directly or indirectly owns or leases
152 nonexempt land, as provided in 43 CFR 426.2;

153 (o) “Municipal and Industrial (M&I) Water” shall mean Project Water, other than
154 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
155 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
156 kept for personal enjoyment or water delivered to landholdings operated in units of less than five

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157 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of

158 Water Delivered to any such landholding is a use described in subdivision (m) of this Article;

159 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
160 delivery of M&I Water;

161 (q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable
162 care, control, operation, repair, replacement (other than capital replacement), and maintenance of
163 Project facilities;

164 (r) “Operating Non-Federal Entity” shall mean the Operating Non-Federal
165 Entity(ies) and their successors or assigns, which have the obligation to operate and maintain all or a
166 portion of the Project facilities including the San Felipe Division Facilities pursuant to written
167 agreements with the United States. When this Contract was entered into, the Operating Non-Federal
168 Entity(ies) were the San Luis & Delta-Mendota Water Authority with respect to the Delta Division
169 Facilities, and Santa Clara Valley Water District with respect to certain San Felipe Division
170 Facilities, and San Benito County Water District with respect to certain San Felipe Division
171 Facilities;

172 (s) “Project” shall mean the Central Valley Project owned by the United States
173 and managed by the Department of the Interior, Bureau of Reclamation;

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174 (t) “Project Contractors” shall mean all parties who have water service contracts
175 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

176 (u) “Project Water” shall mean all water that is developed, diverted, stored, or
177 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
178 with the terms and conditions of water rights acquired pursuant to California law;

179 (v) “Rates” shall mean the payments determined annually by the Contracting
180 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
181 described in subdivision (a) of Article 7 of this Contract;

182 (w) “Recent Historic Average” shall mean the most recent five year average of the
183 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
184 contract(s);

185 (w.1) “San Felipe Division Facilities” shall mean **those existing and future Project**
186 **facilities generally west of San Luis Reservoir, including but not limited to, the Pacheco**
187 **Pumping Plant, Pacheco Substation, Pacheco Tunnel, including the inlet works in and under San Luis**
188 **Reservoir, Pacheco Conduit, Pacheco Bifurcation Structure, Santa Clara Tunnel and Conduit, Coyote**
189 **Pumping Plant, Hollister Canal and Conduit, San Justo Dam and Reservoir used to divert, store and**
190 **convey water to Project;**

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191 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
192 successor, or an authorized representative acting pursuant to any authority of the Secretary and
193 through any agency of the Department of the Interior;

194 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for
195 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

196 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for
197 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

198 (aa) "Water Made Available" shall mean the estimated amount of Project Water
199 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
200 pursuant to subdivision (a) of Article 4 of this Contract;

201 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor
202 for which times and quantities for delivery have been established by the Contractor and Contracting
203 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

204 TERM OF CONTRACT

205 2. (a) (1) This Contract shall be effective January 1, 200_ through December 31,
206 20__, and supercedes the Existing Contract, except to the extent otherwise provided herein. In the
207 event the Contractor is declared invalid or unenforceable by a final decree of a court of competent

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208 jurisdiction, the Existing Contract shall be revived as though it had not been superseded or terminated
209 by execution of this Contract.

210 (2) In the event the Contractor wishes to renew this Contract
211 beyond February 28/29, 20__, the Contractor shall submit a request for renewal in writing to the
212 Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal of
213 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
214 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
215 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

216 (b) (1) Under terms and conditions of a renewal contract that are
217 mutually agreeable to the parties hereto, and upon a determination by the Contracting Officer that at
218 the time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and
219 subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation
220 Water to the Contractor, shall be renewed for a period of 25 years.

221 (2) The conditions which must be met for this Contract to be renewed are:
222 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
223 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
224 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an

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effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

(3) The terms and conditions of the renewal contract described in subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties' respective legal rights and obligations, and in consideration of all relevant facts and circumstances, as those circumstances exist at the time of renewal, including, without limitation, the Contractor's need for continued delivery of Project Water; environmental conditions affected by implementation of the Contract to be renewed, and specifically changes in those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the

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CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

(c) This Contract, insofar as it pertains to the furnishing of M&I Water to the Contractor, shall be renewed for successive periods of up to forty 40 years each, which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised policy applicable to the delivery of M&I Water that would limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40 years.

(d) The Contracting Officer shall make a determination ten years after the date of execution of this Contract, and every five years thereafter during the term of this Contract, of whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat. 483). The Contracting Officer shall also make a determination ten years after the date of execution of this Contract and every five years thereafter during the term of this Contract of whether a conversion of the relevant portion of this Contract to a contract under subsection 9 (c)(1) of the Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the

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259 Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483).
260 The Contracting Officer anticipates that during the term of this Contract, all authorized Project
261 construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
262 upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees
263 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
264 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
265 under subsection 9(d) or 9(c)(1), whichever is applicable of the Reclamation Project Act of 1939,
266 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the
267 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
268 determination by the Contracting Officer that, account being taken of the amount credited to return
269 by the Contractor as provided for under Federal Reclamation law, the remaining amount of
270 construction costs assignable for ultimate return by the Contractor can probably be repaid to the
271 United States within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable.
272 If the remaining amount of costs that are properly assignable to the Contractor cannot be determined
273 during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the
274 reason(s) why such a determination could not be made. Further, the Contracting Officer shall make
275 such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and

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satisfaction of the conditions set out above, conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939. In the event such determination of costs has not been made at a time which allows conversion of this Contract during the term of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a provision that carries forth in substantially identical terms the provisions of this subdivision. Provided, however, That with respect to the San Felipe Division Facilities, conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, may occur independently of the conversion provided for in this subdivision (d) of this Article.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 152,500 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been

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constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years, the Recent Historic Average of Water Made Available to the Contractor was ____ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

(c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that receives Project Water through the Delta Division Facilities obtains a contractual agreement that the Contracting Officer shall make Project Water available at a point or points of delivery in or north of the Delta, at the request of the Contractor and upon completion of any required environmental documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely to those changes made necessary by the addition to such alternate points of delivery in or north of the Delta; Provided,

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310 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water
311 does not trigger this right of amendment.

312 (d) The Contractor shall make reasonable and beneficial use of all water furnished
313 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
314 banking programs, surface water storage programs, and other similar programs utilizing Project
315 Water or other water furnished pursuant to this Contract conducted within the **Joint** Service Area
316 which are consistent with applicable State law and result in use consistent with Federal Reclamation
317 law will be allowed; Provided, That any direct recharge program(s) is (are) described in the
318 Contractor's water conservation plan or the water conservation plan(s) of other contractor(s) within
319 the Joint Service Area submitted pursuant to Article 26 of this Contract; Provided, further, That such
320 water conservation plan demonstrates sufficient lawful uses exist in the **Joint** Service Area or the
321 service area(s) of other contractor(s) within the Joint Service Area so that using a long-term average,
322 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance
323 with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs,
324 surface water storage programs, and other similar programs utilizing Project Water or other water
325 furnished pursuant to this Contract conducted outside the **Joint** Service Area may be permitted upon
326 written approval of the Contracting Officer, which approval will be based upon environmental

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documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of _____ years of diversions for irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under this Article during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making

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such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term contractual commitments, water rights and operational constraints, long-term Project Contractors shall have a first right to acquire such water, including Project Water made available pursuant to Section 215 of the RRA.

(g) The Contractor may request permission to reschedule for use during the subsequent Year some or all of the Water Made Available to the Contractor during the current Year, referred to as “rescheduled water”. The Contractor may request permission to use during the current Year a quantity of Project Water which may be made available by the United States to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable

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State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

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378 TIME FOR DELIVERY OF WATER

379 4 (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
380 announce the Contracting Officer's expected declaration of the Water Made Available. Such
381 declaration will be expressed in terms of both Water Made Available and the Recent Historic
382 Average and will be updated monthly, and more frequently if necessary, based on then-current
383 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
384 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
385 basis of the estimate, with relevant supporting information, upon the written request of the
386 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
387 shall provide the Contractor with the updated Recent Historic Average.

388 (b) On or before March 1 and at such other times as necessary, the Contractor shall
389 submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing
390 the monthly quantities of Project Water to be delivered by the United States to the Contractor
391 pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall
392 use all reasonable means to deliver Project Water according to the approved schedule for the Year
393 commencing on such March 1.

394 (c) The Contractor shall not schedule Project Water in excess of the quantity of

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Project Water the Contractor intends to put to reasonable and beneficial use within the **Joint** Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at **the headworks of the Santa Clara facilities and at any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor. The Contractor is also a California State Water Project (SWP) contractor. At the request of the Contractor, and with written approval of Contracting Officer and the State of California Department of Water Resources (DWR), Project Water may be made available to the Contractor for delivery through SWP facilities to the extent that such delivery of Project Water, in the determination of the Contracting Officer after consultation with the Contractor, does not (i) impact or violate**

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any agreements that exist between the Contracting Officer and DWR at the time such change in point of delivery is made, (ii) adversely impact Project operations; (iii) adversely impact other Project Contractors; (iv) result in an increase of the amount of Project Water the Contractor is entitled to receive pursuant to the applicable Year's allocation of south-of-Delta Project contractors; and (v) violate CVP water right permits or licenses.

(b) The Contracting Officer, either directly or indirectly through its written agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not deliver Project Water to land outside the **Joint** Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contracting Officer either directly or indirectly through its written agreement(s) with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting

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Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating

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Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies).

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA¹

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes [to the Contractor's customers](#) within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes [to the Contractor's customers](#) is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for **ensuring that its retail customers** are installing, operating, and maintaining and repairing all measuring devices and implementing all water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices

¹ Contractor specific issue which may require additional language.

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or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 26.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not

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respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article.

(d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation Water and M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER

7. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance

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with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Component as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such

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513 notification shall revise Exhibit "B."

514 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
515 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
516 Water for the following Year and the computations and cost allocations upon which those Rates are
517 based. The Contractor shall be allowed not less than two months to review and comment on such
518 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
519 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
520 upcoming Year, and such notification shall revise Exhibit "B."

521 (c) At the time the Contractor submits the initial schedule for the delivery of
522 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
523 shall make an advance payment to the United States equal to the total amount payable pursuant to the
524 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
525 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
526 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
527 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
528 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
529 following. Adjustments between advance payments for Water Scheduled and payments at Rates due

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530 for Water Delivered shall be made before the end of the following month; Provided, That any revised
531 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
532 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
533 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
534 to the Contractor in advance of such payment. In any month in which the quantity of Water
535 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
536 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until
537 an advance payment at the Rates then in effect for such additional Project Water is made. Final
538 adjustment between the advance payments for the Water Scheduled and payments for the quantities
539 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
540 but no later than April 30th of the following Year, or sixty days after the delivery of Project Water
541 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
542 last day of February.

543 (d) The Contractor shall also make a payment in addition to the Rate(s) in
544 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
545 appropriate Tiered Pricing Component then in effect, before the end of the month following the
546 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered

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547 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
548 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
549 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
550 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed
551 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
552 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
553 payments due to the United States for Charges for the next month. Any amount to be paid for past
554 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
555 of this Contract.

556 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
557 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
558 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
559 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
560 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
561 (a) of this Article;

562 (f) Payments to be made by the Contractor to the United States under this
563 Contract may be paid from any revenues available to the Contractor.

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(g) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-Project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

(h) The Contracting Officer shall keep its accounts pertaining to the administration of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

(i) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component, and/or for making and allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify

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the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

(j) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

(2) Subject to the Contracting Officer's written approval, the Contractor may request and receive an exemption from such Tiered Pricing Component for Project Water delivered to produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply

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only if such habitat values can be assured consistent with the purposes of the CVPIA through binding agreements executed with or approved by the Contracting Officer prior to use of such water.

(3) For purposes of determining the applicability of the Tiered Pricing Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor transfers to others but shall not include Project Water transferred to the Contractor, nor shall it include the additional water provided to the Contractor under the provisions of subdivision (f) of Article 3 of this Contract.

(k) For the term of this Contract, Rates applied under the respective ratesetting policies will be established to recover only reimbursable O&M (including any deficits) and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

(l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted

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upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity who's Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

(m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

REPAYMENT OF PROJECT WORKS

7.1 (a) Repayment of San Felipe Project Works. The unpaid balance of reimbursable capitalized costs for the San Felipe Division facilities as of _____ was _____. The Contractor and San Benito County Water District are each entering into contracts with the United States committing to repay their separate, individual shares of these costs. The Contractor shall have the obligation to repay _____ as set forth in Exhibit _____ attached hereto.

(b) Reach 1 Facilities. The unpaid balance of reimbursable capitalized costs of the facilities from the Pacheco tunnel inlet to and including the Pacheco Bifurcation Structure, hereinafter called Reach 1, as of _____ was \$ _____. The Contractor shall have the

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632 obligation to repay \$_____ for Reach 1 as set forth in Exhibit _____ attached hereto.

633 _____ (c) Reach 2 and Reach 3 Facilities. The unpaid balance of reimbursable costs of

634 the facilities from, but not including the Pacheco Bifurcation Structure, to and including the

635 Watsonville Turnout facility, hereinafter referred to as Reach 2, and the remaining capitalized cost of

636 the facilities from, but not including the Watsonville Turnout facility, to and including Coyote

637 Pumping Plant, hereinafter referred to as Reach 3, as of _____ was \$ _____. The Contractor

638 shall have the obligation to repay \$_____ for Reaches 2 and 3, as set forth in Exhibit _____

639 attached hereto.

640 _____ (d) Upon full repayment of these amounts, the Contractor shall have no further

641 repayment obligations associated with the capitalized costs of the facilities as specified in subdivision

642 (b) and (c) above, or as cumulatively set forth in (a) above, for the period up to the date set forth

643 above.

644 _____ (e) Capitalized Interest. The interest rate for the repayment of the portion of the

645 Pacheco Tunnel inlet used for M&I purposes shall be 3.137 percent per annum.

646 _____ (1) The interest rate for repayment of the portion of the San Felipe

647 Division Facilities, not including the Pacheco Tunnel inlet, used for M&I purposes shall be 3.5

648 percent annum.

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649 (2) The interest rate for repayment of Interest During Construction for the
650 San Felipe Division Facilities allocated to the M&I function shall be a weighted rate of percent
651 per annum.

652 (3) Unpaid capital interest accruing prior to October 2004 shall be repaid at
653 a rate of percent per annum consistent with the Agreement For Settlement of the CVP M&I
654 Ratesetting Lawsuit entered into in 2005 to resolve *City of Fresno v. United States*, Civ. No. F-03-
655 5350 (E.D. Cal.).

656 (f) Prepayments and Relief from Payment Schedule

657 (1) The Contractor may, instead of making the payments provided for in
658 subdivisions (a), (b) and (c) above, at any time, submit full or partial advanced payment on any or all
659 of the facilities described in those subdivisions. If, at any time prior to the expiration of this Contract,
660 the Contractor desires to make full payment for any or part of the Contractor's share of Reach 1 and
661 the San Benito Facilities, the appropriate reimbursable repayment amount for such facilities will be
662 determined by the Contracting Officer and provided to the Contractor. Upon full payment of this
663 amount, the Contractor shall have no further repayment obligations associated with the capitalized
664 costs of the facilities as specified in (a), (b) and (c) above for the period up to [the date certain] set
665 forth in those subdivisions

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666 (2) If circumstances arise that compromise the Contractor's ability to make
667 payments according to Exhibit _____, the Contracting Officer may adjust the schedule for payment and
668 installment amounts consistent with reclamation law.

669 (g) Capital Replacements and Additions.

670 (1) The Contractor may, at its option, and with the prior approval of the
671 Contracting Officer, perform with its own funds any future capital construction or capital
672 replacement work. Upon completion of the work, and acceptance by Reclamation, such capital assets
673 shall be donated to Reclamation pursuant to an asset valuation that includes all costs related to the
674 project, including, but not limited to, the costs for studies, planning, engineering, materials, contracts,
675 and labor. In recognition of the nonreimbursable allocation of the San Felipe Division costs for the
676 conservation and development of fish and wildlife resources and the enhancement of recreation
677 opportunities, 10% of the total costs of each donated capital asset shall be credited to the next
678 scheduled payment(s) due from the Contractor.

679 (2) In the event funding is not provided by the Contractor, the United
680 States remains responsible for any necessary future capital work, and such work shall be undertaken
681 in consultation with the Contractor. Repayment for the Contractor's appropriate share of such future
682 work shall be provided for through a separate contract or, at the Contractor's option, the parties may

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683 [agree to revision or addition of exhibits to this Contract without amending the Contract.](#)

684 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

685 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
686 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
687 therefore.

688 SALES, TRANSFERS, OR EXCHANGES OF WATER

689 9. (a) The right to receive Project Water provided for in this Contract may be sold,
690 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
691 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
692 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
693 Contract may take place without the prior written approval of the Contracting Officer, except as
694 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
695 approved absent all appropriate environmental documentation, including but not limited to,
696 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
697 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
698 including environmental justice, of the proposed water transfers on both the transferor and transferee.

699 (b) In order to facilitate efficient water management by means of water transfers of

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the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including but not limited to documents prepared pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to

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established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for herein. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year

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in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 25.

TEMPORARY REDUCTIONS--RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

(b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due

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notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the **Joint** Service Area; Provided, That this shall not be construed as claiming for the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the **Joint** Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination

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768 as soon as practicable.

769 (b) If there is a Condition of Shortage because of errors in physical operations of
770 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
771 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
772 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
773 agents, or employees for any damage, direct or indirect, arising therefrom.

774 (c) In any Year in which there may occur a Condition of Shortage for any of the
775 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, and
776 subject to subdivision (d) of this Article, the Contracting Officer will first allocate the available
777 Project Water consistent with the Central Valley Project M&I Water Shortage Policy in its form on
778 the effective date of this Contract for determining the amount of Project Water available for delivery
779 to the Project Contractors. Subject to the forgoing allocation, in any Year in which there may occur a
780 Condition of Shortage, the Contracting Officer shall then apportion Project Water among the
781 Contractor and others entitled to Project Water from Delta Division Facilities under a long-term
782 water service or repayment contracts (or renewals thereof or binding commitments therefore) in force
783 on February 28, 2005, as follows:

784 (1) The Contracting Officer shall make an initial and subsequent

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determination as necessary of the total quantity of Project Water estimated to be scheduled or actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water service or repayment contracts then in force for the delivery of Project Water by the United States from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter referred to as the scheduled total;

(2) A determination shall be made of the total quantity of Project Water that is available for meeting the scheduled total, the quantity so determined being hereinafter referred to as the available supply;

(3) The total quantity of Project Water estimated to be scheduled or actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to as the Contractor's proportionate share; and

(4) The available supply shall be multiplied by the Contractor's proportionate share and the result shall be the quantity of Project Water made available by the United States to the Contractor for the relevant Year in accordance with the schedule developed by the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such amount exceed the Contract Total. In the event the Contracting Officer subsequently determines that the

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802 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
803 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
804 such additions or reductions to the available supply shall be apportioned consistent with
805 subparagraphs (1) through (4), inclusive.

806 (d) Project Water furnished under this long-term renewal contract for M&I
807 purposes will be allocated in accordance with the Central Valley Project M&I Water Shortage Policy.
808 Such policy shall be amended, modified, or superceded only through a public notice and comment
809 procedure. **[Contractor Specific].**

810 (e) By entering into this Contract, the Contractor does not waive any legal rights
811 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
812 (i) the sufficiency of any Central Valley Project M&I Water Shortage Policy; (ii) the substance of
813 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
814 implemented in order to allocate Project Water between M&I and irrigation purposes; Provided, That
815 the Contractor has commenced any such judicial challenge or any administrative procedures
816 necessary to institute any judicial challenge within six months of the policy becoming final. By
817 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that
818 it may then have to assert in such a proceeding. Nothing contained herein shall be interpreted to

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819 validate or invalidate the Central Valley Project M&I Water Shortage Policy.

820 UNAVOIDABLE GROUNDWATER PERCOLATION

821 13. To the extent applicable, the Contractor shall not be deemed to have delivered
822 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such
823 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of
824 the delivery of Irrigation Water by the Contractor to Eligible Lands.

825 RULES AND REGULATIONS

826 14. (a) Except as provided by the San Felipe Division Act of August 28, 1967 (81
827 Stat. 173), the parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant
828 to this Contract is subject to Federal Reclamation law, including but not limited to the Reclamation
829 Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and
830 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

831
832 WATER AND AIR POLLUTION CONTROL

833
834 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
835 and air pollution laws and regulations of the United States and the State of California, and shall
836 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

837
838 QUALITY OF WATER

839
840 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
841 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
842 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

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843 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
844 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
845 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
846 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
847 Contractor pursuant to this Contract.

848 (b) The O&M of Project facilities shall be performed in such manner as is
849 practicable to maintain the quality of raw water made available through such facilities at the highest
850 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
851 responsible for compliance with all State and Federal water quality standards applicable to surface
852 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
853 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

854

855

856

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

857 17. (a) Except as provided by the San Felipe Division Act of August 28, 1967 (81 Stat.
858 173), water or water rights now owned or hereafter acquired by the Contractor other than from the
859 United States and Irrigation Water furnished pursuant to the terms of this Contract may be
860 simultaneously transported through the same distribution facilities of the Contractor subject to the
861 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
862 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
863 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation

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864 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
865 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
866 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
867 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
868 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
869 Water and non-Project water are/were constructed with funds made available pursuant to Federal
870 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
871 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
872 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
873 cost to the Federal Government, including interest of storing or delivering non-Project water, which
874 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
875 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
876 The incremental fee per acre is the mathematical result of such quotient times the interest rate
877 determined using Section 202(3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
878 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
879 receives non-Project water through Federally financed or constructed facilities. The incremental fee
880 calculation methodology will continue during the term of this Contract absent the promulgation of a

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881 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
882 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
883 regulation or policy is adopted it shall supercede this provision.

884 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
885 than from the United States may be stored, conveyed and/or diverted through Project facilities,
886 subject to the completion of appropriate environmental documentation, with the approval of the
887 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
888 necessary, consistent with the following provisions:

889 (1) The Contractor may introduce non-Project water into Project facilities
890 and deliver said water to lands within the **Joint** Service Area, including Ineligible Lands, subject to
891 payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate
892 rate as determined by the applicable Project ratesetting policy, the RRA, and the Project use power
893 policy, if such Project use power policy is applicable, each as amended, modified or superceded from
894 time to time.

895 (2) Delivery of such non-Project water in and through Project facilities
896 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
897 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other

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898 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other
899 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities
900 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
901 shall be responsible for control, care or distribution of the non-Project water before it is introduced
902 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
903 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
904 respective officers, agents, and employees, from any claim for damage to persons or property, direct
905 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
906 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
907 into Project facilities.
908 (4) Diversion of such non-Project water into Project facilities shall be
909 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
910 groundwater management plan for the area from which it was extracted.
911 (5) After Project purposes are met, as determined by the Contracting
912 Officer, the United States and the Project Contractors entitled to receive Project Water through Delta
913 Division Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
914 available by the Contracting Officer for conveyance and transportation of non-Project water prior to

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915 any such remaining capacity being made available to non-Project contractors. Other Project
916 Contractors shall have a second priority to any remaining capacity of facilities declared to be
917 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
918 any such remaining capacity being made available to non-Project contractors.

919 OPINIONS AND DETERMINATIONS

920 18. (a) Where the terms of this Contract provide for actions to be based upon the
921 opinion or determination of either party to this Contract, said terms shall not be construed as
922 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
923 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
924 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
925 unreasonable opinion or determination. Each opinion or determination by either party shall be
926 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
927 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
928 determination implementing a specific provision of Federal law embodied in statute or regulation.

929 (b) The Contracting Officer shall have the right to make determinations necessary
930 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
931 United States and of the State of California, and the rules and regulations promulgated by the

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Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

(b) Within 120 days following the effective date of this Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of this process shall be to provide, to the extent practicable, the means of mutual communication and interaction regarding

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949 significant decisions concerning Project operation and management on a real-time basis.

950 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract,
951 it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

952 (1) The Contracting Officer will, at the request of the Contractor, assist in
953 the development of integrated resource management plans for the Contractor. Further, the
954 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
955 improve water supply, water quality, and reliability.

956 (2) The Secretary will, as appropriate, pursue program and project
957 implementation and authorization in coordination with Project Contractors to improve the water
958 supply, water quality, and reliability of the Project for all Project purposes.

959 (3) The Secretary will coordinate with Project Contractors and the State of
960 California to seek improved water resource management.

961 (4) The Secretary will coordinate actions of agencies within the
962 Department of the Interior that may impact the availability of water for Project purposes.

963 (5) The Contracting Officer shall periodically, but not less than annually,
964 hold division level meetings to discuss Project operations, division level water management
965 activities, and other issues as appropriate.

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(d) Without limiting the contractual obligations of the Contracting Officer under the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or the physical integrity of structures or facilities.

CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

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992 21. During the performance of this Contract, the Contractor agrees as follows:

993 (a) The Contractor will not discriminate against any employee or applicant for
994 employment because of race, color, religion, sex, or national origin. The Contractor will take
995 affirmative action to ensure that applicants are employed, and that employees are treated during
996 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
997 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
998 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
999 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
1000 conspicuous places, available to employees and applicants for employment, notices to be provided by
1001 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1002 (b) The Contractor will, in all solicitations or advertisements for employees placed
1003 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
1004 employment without discrimination because of race, color, religion, sex, or national origin.

1005 (c) The Contractor will send to each labor union or representative of workers with
1006 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
1007 provided by the Contracting Officer, advising the said labor union or workers' representative of the
1008 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
1009 shall post copies of the notice in conspicuous places available to employees and applicants for
1010 employment.

1011 (d) The Contractor will comply with all provisions of Executive Order
1012 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
1013 the Secretary of Labor.
1014

1015 (e) The Contractor will furnish all information and reports required by said
1016 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1017 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
1018 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
1019 regulations, and orders.

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1020 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1021 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1022 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
1023 for further Government contracts in accordance with procedures authorized in said amended
1024 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
1025 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
1026 by law.

1027 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1028 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1029 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1030 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
1031 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
1032 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That
1033 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor
1034 or vendor as a result of such direction, the Contractor may request the United States to enter into such
1035 litigation to protect the interests of the United States.

1036 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1037 22. (a) The obligation of the Contractor to pay the United States as provided in this
1038 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
1039 may be distributed among the Contractor's water users and notwithstanding the default of individual
1040 water users in their obligations to the Contractor.

1041 (b) The payment of charges becoming due hereunder is a condition precedent to
1042 receiving benefits under this Contract. The United States shall not make water available to the
1043 Contractor through Project facilities during any period in which the Contractor may be in arrears in
1044 the advance payment of water rates due the United States. The Contractor shall not furnish water
1045 made available pursuant to this Contract for lands or parties which are in arrears in the advance
1046 payment of water rates levied or established by the Contractor.
1047

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1048 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1049 obligation to require advance payment for water rates which it levies.

1050 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1051 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1052 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1053 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1054 well as with their respective implementing regulations and guidelines imposed by the U.S.
1055 Department of the Interior and/or Bureau of Reclamation.

1056
1057 (b) These statutes require that no person in the United States shall, on the grounds
1058 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1059 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1060 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1061 agrees to immediately take any measures necessary to implement this obligation, including permitting
1062 officials of the United States to inspect premises, programs, and documents.

1063 (c) The Contractor makes this agreement in consideration of and for the purpose
1064 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1065 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1066 installment payments after such date on account of arrangements for Federal financial assistance
1067 which were approved before such date. The Contractor recognizes and agrees that such Federal
1068 assistance will be extended in reliance on the representations and agreements made in this Article,
1069 and that the United States reserves the right to seek judicial enforcement thereof.

1070
1071 PRIVACY ACT COMPLIANCE

1072 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1073 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1074 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1075 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96

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1076 Stat. 1266), and pursuant to 43 CFR 426.18.

1077 (b) With respect to the application and administration of the criminal penalty
1078 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1079 for maintaining the certification and reporting records referenced in (a) above are considered to be
1080 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1081
1082 (c) The Contracting Officer or a designated representative shall provide the
1083 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1084 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1085 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1086 contained in the Landholder's certification and reporting records.

1087 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1088 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1089 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1090 authorized to grant requests by individuals for access to their own records.

1091 (e) The Contractor shall forward promptly to the System Manager each proposed
1092 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1093 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1094 information and records necessary to prepare an appropriate response to the requester. These
1095 requirements do not apply to individuals seeking access to their own certification and reporting forms
1096 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1097 Act as a basis for the request.

1098

1099 **CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS**

1100

1101 25. In addition to all other payments to be made by the Contractor pursuant to this

1102 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and

1103 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of

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1104 direct cost incurred by the United States for work requested by the Contractor associated with this
1105 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1106 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1107 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1108 administration.

1109 **WATER CONSERVATION**

1110 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1111 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1112 implementing an effective water conservation and efficiency program based on the Contractor's water
1113 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1114 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1115 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1116 economically feasible water conservation measures, and time schedules for meeting those objectives.
1117 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1118 continued implementation of such water conservation program. In the event the Contractor's water
1119 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1120 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such

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1121 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1122 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1123 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1124 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1125 program in accordance with the time schedules therein.

1126 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1127 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1128 the Best Management Practices identified by the time frames issued by the California Urban Water
1129 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1130 Officer to be inappropriate for the Contractor.

1131 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1132 its implementation of the water conservation plan on the reporting dates specified in the then existing
1133 conservation and efficiency criteria established under Federal law.

1134 (d) At 5 year intervals, the Contractor shall revise its water conservation plan to
1135 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1136 established under Federal law and submit such revised water management plan to the Contracting
1137 Officer for review and evaluation. The Contracting Officer will then determine if the water

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1138 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1139 evaluating water conservation plans established under Federal law.

1140 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1141 be described in the Contractor's water conservation plan.

1142 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1143 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1144 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1145 acquired by the Contractor or any user of such water within the **Joint** Service Area. Any such water
1146 shall not be considered Project Water under this Contract. In addition, this Contract shall not be
1147 construed as limiting or curtailing any rights which the Contractor or any water user within the **Joint**
1148 Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

1149 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1150 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1151 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1152 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1153 20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-
1154 Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or

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1155 obligations of the Contractor or the United States hereunder.

1156 (b) The Contracting Officer has previously notified the Contractor in writing that
1157 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1158 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1159 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1160 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the
1161 terms and conditions of the separate agreement between the United States and the Operating Non-
1162 Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this
1163 Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds,
1164 which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such
1165 successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated
1166 and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1167 such successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-
1168 Mendota Water Authority or such successor shall not relieve the Contractor of its obligation to pay
1169 directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1170 Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1171 Authority collects payments on behalf of the United States in accordance with the separate agreement

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1172 identified in subdivision (a) of this Article.

1173 (c) For so long as the O&M of any portion of the Project facilities serving the
1174 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1175 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1176 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1177 performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or its
1178 successor

1179 (d) In the event the O&M of the Project facilities operated and maintained by the
1180 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1181 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1182 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1183 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1184 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1185 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1186 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1187 States in compliance with Article 7 of this Contract.

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1188 OPERATION AND MAINTENANCE BY SANTA CLARA VALLEY WATER DISTRICT²

1189 28.1 (a) The O&M of a portion of the San Felipe Division Facilities have been
1190 transferred to Santa Clara Valley Water District by separate agreements (Contract No. 6-07-20-
1191 X0290) between the United States and the existing San Felipe Division Contractors. Unless
1192 otherwise expressly set forth herein, nothing in this Contract is intended to affect the rights and
1193 obligations set forth in Contract No. 6-07-20-X0290. The United States and the Contractor agree that
1194 this Contract, and any amendments or renewals thereto, shall be considered to be within the definition
1195 of "Contract" as provided in Contract No. 6-07-20-X0290, so that the execution of this Contract shall
1196 not impact the effectiveness of Contract No. 6-07-20-X0290, and Contract No. 6-07-20-X0290 is
1197 hereby deemed to so provide.

1198 (b) — ~~Santa Clara Valley Water District, Operating Non-Federal Entity has the right~~
1199 ~~to charge, in addition to O&M charges set forth in Contract No. 6-07-20-X0290, such rates and~~
1200 ~~charges to future contractors of the San Felipe Division Facilities as are reasonable.~~

1201 (b) If requested by the Contractor, the United States shall be responsible for major
1202 repair or replacement of San Felipe Division Facilities required as a result of disaster of obsolescence
1203 as determined by the Contracting Officer.

2 Language still subject to modification

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1204 ~~(c) — Notwithstanding the foregoing, if requested by the Contractor, the United~~
1205 ~~States shall be responsible for major repair or replacement of San Felipe Division Facilities required~~
1206 ~~as a result of disaster or obsolescence as determined by the Contracting Officer. [Undergoing~~
1207 ~~construction of language by Contractors]~~

1208 28.2 (a) Santa Clara Valley Water District, as the Operating Non-Federal Entity, has
1209 the right to impose upon any entity other than San Benito County Water District a charge to recover
1210 costs incurred by Santa Clara Valley Water District for Reach 1 of the San Felipe Division Facilities,
1211 in addition to O&M charges, provided that such charges are just and reasonable.

1212 (b) In any contract with any entity other than San Benito County Water District to
1213 deliver Project Water or non-Project water through Reach 1 of the San Felipe Division Facilities, the
1214 Contracting Officer shall require the contractor to pay to Santa Clara Valley Water District such
1215 charges as are just and reasonable for the use of Reach 1 of the San Felipe Division Facilities.

1216 28.3 (a) The Contractor, as the Operating Non-Federal Entity, has the right to impose
1217 upon any entity a charge to recover costs incurred by the Contractor for Reach 2 of the San Felipe
1218 Division Facilities, in addition to O&M charges, provided that such charges are just and reasonable.

1219 (b) In any contract with any entity to deliver Project Water or non-Project water
1220 through the San Felipe Division Facilities, the Contracting Officer shall require the contractor to pay

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1221 to Contractor such charges as are just and reasonable for the use of Reach 2 of the San Felipe
1222 Division Facilities.

1223 28.4 (a) Articles 17, 18, 19 and 20 of Contract No. 7-07-20-W0023 are hereby
1224 incorporated into this contract as though fully set forth herein.

1225 (b) The Contractor, as the Operating Non-Federal Entity, has the right to impose
1226 upon any entity a charge to recover costs incurred by the Contractor for Reach 3 of the San Felipe
1227 Division Facilities, in addition to O&M charges, provided that such charges are just and reasonable.

1228 (c) In any contract with any entity to deliver Project Water or non-Project water
1229 through the San Felipe Division Facilities, the Contracting Officer shall require the contractor to pay
1230 to Contractor such charges as are just and reasonable for the use of Reach 3 of the San Felipe
1231 Division Facilities.

1232 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1233 29. The expenditure or advance of any money or the performance of any obligation of the
1234 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1235 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1236 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1237 or allotted.

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BOOKS, RECORDS, AND REPORTS

1239 30. (a) The Contractor shall establish and maintain accounts and other books and
1240 records pertaining to administration of the terms and conditions of this Contract, including: the
1241 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1242 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1243 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1244 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1245 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1246 during office hours to examine and make copies of the other party's books and records relating to
1247 matters covered by this Contract.

1248
1249 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1250 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1251 such books, records, or information are reasonably related to the administration or performance of
1252 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1253 to provide the requested books, records, or information.

1254
1255 (c) At such time as the Contractor provides information to the Contracting Officer
1256 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1257 Operating Non-Federal Entity.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1259 31. (a) The provisions of this Contract shall apply to and bind the successors and
1260 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1261 therein shall be valid until approved in writing by the Contracting Officer.

1262 (b) The assignment of any right or interest in this Contract by either party shall not
1263 interfere with the rights or obligations of the other party to this Contract absent the written

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1264 concurrence of said other party.

1265 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1266 of any proposed assignment.

1267 **SEVERABILITY**

1268 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1269 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1270 association or other form of organization whose primary function is to represent parties to Project
1271 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1272 enforceability of a provision included in this Contract and said person, entity, association, or
1273 organization obtains a final court decision holding that such provision is legally invalid or
1274 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1275 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1276 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1277 within 3 months thereafter promptly agree on the appropriate revision(s). The time periods specified
1278 above may be extended by mutual agreement of the parties. Pending the completion of the actions
1279 designated above, to the extent it can do so without violating any applicable provisions of law, the
1280 United States shall continue to make the quantities of Project Water specified in this Contract

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1281 available to the Contractor pursuant to the provisions of this Contract which were not found to be
1282 legally invalid or unenforceable in the final court decision.

1283 RESOLUTION OF DISPUTES

1284 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1285 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1286 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1287 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1288 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1289 in commencing an action would prejudice the interests of the party that intends to file suit. During
1290 the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in an
1291 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or
1292 abridge any right or remedy that the Contractor or the United States may have.

1293 OFFICIALS NOT TO BENEFIT

1294 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1295 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1296 manner as other water users or landowners.

1297

1298 CHANGES IN CONTRACTOR'S SERVICE AREA

1299 35. (a) While this Contract is in effect, no change may be made in the Contractor's

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1300 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1301 except upon the Contracting Officer's written consent.

1302 (b) Within 30 days of receipt of a request for such a change, the Contracting
1303 Officer will notify the Contractor of any additional information required by the Contracting Officer
1304 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1305 timely completion of the process. Such process will analyze whether the proposed change is likely
1306 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1307 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1308 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1309 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1310 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1311 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1312 FEDERAL LAWS

1313 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1314 validity or application in connection with the performance of the terms and conditions of this
1315 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1316 terms and conditions of this Contract unless and until relief from application of such Federal law or

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1317 regulation to the implementing provision of the Contract is granted by a court of competent
1318 jurisdiction.

1319 NOTICES

1320 37. Any notice, demand, or request authorized or required by this Contract shall be
1321 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1322 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1323 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of
1324 the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118-3686. The
1325 designation of the addressee or the address may be changed by notice given in the same manner as
1326 provided in this Article for other notices.

1327 CONFIRMATION OF CONTRACT

1328 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1329 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1330 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1331 validation proceedings, and all pertinent supporting records of the court approving and confirming
1332 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

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EXHIBIT A
[Map or Description of Service Area]

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EXHIBIT B

[Initial Rates and Charges]